

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN J. PETITO, et al.,

Plaintiffs,

v.

ERIC A. BREWSTER, et al.,

Defendants.

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Civil Action No. **3:08-CV-0006-L**

ORDER

Before the court are the Findings and Recommendation of the United States Magistrate Judge, filed March 10, 2008. Plaintiff John Petito filed his objections in a document titled “Opposition to ‘Good Ole’ Boys’ Circle Jerk Texas Attorney’s Love Tryst Club’s’ Conflicted and Dirty Rogue Judge Kaplan’s (Bernie) 3/10/08 Hogwash Memorandum Opinion and Order and Fraudulently Dumb 3/10/08 Recommendation” on March 18, 2008. Plaintiff also filed a Motion for the Court to Sanction the Liar Richard Smith Who Again Lied to the Court and to the Conflicted and to-be Removed Judge Kaplan on March 11, 2008.

On March 10, 2008, the magistrate judge granted a motion for sanctions filed by Defendants Jeffrey M. Tillotson and Richard A. Smith against John Petito. The magistrate judge sanctioned Petito \$500 for sending threatening e-mails to opposing counsel on December 23, 2007 and January 11, 2008. While the motion for sanctions was pending, Mr. Petito was ordered to appear in person at a hearing before the magistrate judge on February 1, 2008. The court ultimately reset the hearing for February 22, 2008 and again ordered Mr. Petito to appear in person. Although Mr. Petito sought various relief, including delaying the hearing and seeking permission to call into the hearing, this

relief was denied and he was repeatedly warned that his failure to appear at hearing might result in his claims being dismissed with prejudice.

When Petito failed to appear, the magistrate judge sanctioned him \$1000 for his failure to appear and set another show cause hearing on March 7, 2008 for Mr. Petito to show cause why further sanction was not appropriate given his failure to appear. Mr. Petito moved to vacate the sanction and to remove Judge Kaplan from this case, making numerous unwarranted and personal attacks upon the magistrate judge. In denying that motion, the court specifically warned Mr. Petito that its admonition to him in a related case against making personal attacks on the lawyers or litigants was extended to this action. Moreover, the court stated that it warned him “***that personal, ad hominem attacks upon this court and its judges will not be tolerated. Violations of this order may subject Mr. Petito to further sanctions.***” Order (Feb. 27, 2008) 3 (emphasis in original).

In light of Mr. Petito’s repeated failure to appear at show cause hearings, the magistrate judge now recommends, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, the dismissal with prejudice of his case due to the clear history of his contumacious conduct. The magistrate judge found that monetary sanctions have failed to deter Mr. Petito from violating court orders, and that no sanction short of dismissal would serve the interests of justice.

In response, Mr. Petito makes his objections in the form of a document that attacks the magistrate judge using colorful language and that makes salacious accusations. Mr. Petito argues again that he should have been allowed to call into the hearings, and that it is impossible for him to appear in court in Texas because he is insolvent and bankrupt. Mr. Petito goes on to make accusations about other attorneys in this litigation, points to actions he considers his successes in

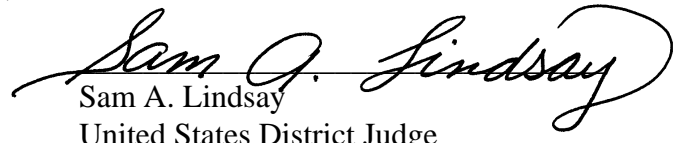
this litigation, and threatens additional lawsuits. Mr. Petito also advises the magistrate judge that he will appeal this case and that he seeks his removal from the bench.

The court has reviewed the magistrate judge's findings and determines that they are correct and are therefore **accepted** as those of the court. The court determines that striking Mr. Petition's pleadings and dismissing his case with prejudice is an appropriate sanction given Mr. Petito's repeated violation of the court's orders to appear at hearings. Accordingly, the court **strikes** Mr. Petito's pleadings and **dismisses** this case **with prejudice**.

The court now turns to Plaintiff's Motion for the Court to Sanction the Liar Richard Smith who Again Lied to the Court and to the Conflicted and to-be Removed Judge Kaplan, filed March 11, 2008. In this motion, Mr. Petito again attacks Magistrate Judge Kaplan and the decisions he has made, as well as arguing that attorney Richard Smith has also engaged in sanctionable conduct, including lying to the court in a notice filed on March 5, 2008. The court determines that Mr. Petito has not made a showing that Smith should be sanctioned and rejects the rest of the motion directed at Judge Kaplan for the reasons stated above and in the court's previous orders. Accordingly, the court **denies** Plaintiff's Motion for the Court to Sanction the Liar Richard Smith who Again Lied to the Court and to the Conflicted and to-be Removed Judge Kaplan.

The court is not amused by Mr. Petito's filings and has warned him repeatedly to refrain from personal attacks against the counsel, litigants, and judges involved in this case. These warnings have not been heeded; Mr. Petito has continued his assault of baseless, personal attacks upon the lawyers and the magistrate judge in this case. **The court is considering whether Mr. Petito's actions rise to the level of either civil or criminal contempt, and will decide shortly whether it will issue a show cause order for civil or criminal contempt against Mr. Petito.**

It is so ordered this 31st day of March, 2008.


Sam A. Lindsay
United States District Judge